



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

DRAFT

Date:	Enrolled	Bill No:	<a href="#">AB 1589</a>
Tax:	Property	Author:	Huffman
Sponsor:	Author	Code Sections:	RTC 201.7
Related Bills:		Effective Date:	01/01/13

***This analysis is limited to the property tax provisions of this bill.***

**BILL SUMMARY**

This bill, in part, ensures that a qualified nonprofit governmental entity entering into an operating agreement with the Department of Parks and Recreation with respect to a state park is acting as an agent of the state. As such, a taxable possessory interest is not created and the nonprofit organization will not incur any property tax liability.

**ANALYSIS**

**CURRENT LAW**

**State Owned Property.** Article XIII Section 3(a) of the California Constitution provides that property owned by the state is exempt from property taxation.

**Possessory Interests.** Revenue and Taxation Code (RTC) Section 107 sets forth the three essential elements that must exist to find that a person's use of publicly-owned tax-exempt property rises to a level of a taxable possessory interest. Those elements are independence, durability, and exclusivity.

Relevant to this bill, with respect to the element of independence, Section 107(a)(1) defines "independent" to mean "the ability to exercise authority and exert control over the management or operation of the property or improvements, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the property or improvements. A possession or use is independent if the possession or operation of the property is sufficiently autonomous to constitute more than a mere agency."

Property Tax Rule 20, an administrative regulation, specifies that "[t]o be sufficiently autonomous to constitute more than a mere agency, the possessor must have the right and ability to exercise significant authority and control over the management or operation of the real property, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the real property."

**State Parks Operating Agreements with Nonprofit Organizations.** Public Resources Code (PRC) Section 5080.42 authorizes the Department of Parks and Recreation (DPR) to enter into operating agreements with qualified nonprofit organizations for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system. PRC Section 5080.42(g) defines a "qualified nonprofit organization" as an organization that is all of the following:

- Exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

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- Its principal purpose and activity is to provide visitor services in state parks, facilitate public access to park resources, improve park facilities, provide interpretive and educational services, or provide direct protection or stewardship of natural, cultural, or historical lands, or resources.
- Is in compliance with the Supervision of Trustees and Fundraisers for Charitable Purposes Act, Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code.

#### PROPOSED LAW

**Nonprofit Organization Agent of the State.** This bill adds Section 201.7 to the RTC to provide that a qualified nonprofit corporation that enters into an agreement with the DPR pursuant to subdivision (a) of Section 5080.42 of the PRC for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system shall be deemed to be an agent of the state for property tax purposes.

In addition, it expressly provides that any state-owned property, including possessory interests in that property, used or possessed by the qualified nonprofit organization for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system will remain exempt from property tax as state owned property.

#### IN GENERAL

**Possessory Interests.** In certain instances a property tax assessment may be levied when a person or entity uses publicly-owned real property that, with respect to its public owner, is either immune or exempt from property taxation. These uses are commonly referred to as "possessory interests" and are typically found where an individual or entity leases, rents, or uses federal, state or local government facilities and/or land.

RTC Section 107 establishes parameters within which assessors and judicial authorities determine the existence of taxable possessory interests. Generally, those determinations are made according to the facts and circumstances in each individual case.

RTC Section 107.6 requires that when the state or any local government enters into a written contract with a private party whereby a possessory interest subject to property taxation may be created, the private party must be notified in the contract of the potential property tax consequences. If this notification is not given in the contract, the party may recover damages from the contracting state or local government.

**Independence – Agent of a Public Owner.** Under Property Tax Rule 20, a possession, a right to possession, or a claim to a right to possession is independent if it is "sufficiently autonomous to constitute more than a mere agency." In other words, if the possessor acts as an agent of the public owner, the public owner's immunity or exemption from taxation extends to the possessor's activities, and there is no taxable possessory interest.

To constitute more than a mere agency, in the language of the rule, "the possessor must have the right and ability to exercise significant authority and control over the management or operation of the real property, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the real property." In general, independence may be measured by the amount of routine control and supervision enjoyed by the possessor, recognizing that the government necessarily retains ultimate control.

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An agent is one who represents another in dealings with third persons, and the existence of an agency relationship is a question of fact. (California Civil Code Section 2295; Witkin Summary of California Law, 9th, "Agency and Employment," Section 3.) Whether an agency relationship has been created or exists is determined by the relation of the parties as they in fact exist by agreement or acts and the primary right of control is particularly persuasive. (*Pagan v. Spencer* (1951) 104 Cal.App.2d 588, 592- 593.) Factors to be considered to determine if an independent contractor is acting as an agent include the following: (i) whether the principal and agent are engaged in distinct occupations; (ii) the skill required to perform the agent's work; (iii) whether the principal supplies the workplace; (iv) whether the work is part of the principal's regular business; and (v) whether the parties intended to create an agency relationship."

**Nonprofit Organizations and Public Parks.** Existing law expressly provides for an exemption under the welfare exemption for certain land used as public parks where a nonprofit organization is involved:

- RTC Section 214.02 relates to property owned by a nonprofit and used as open space lands open to the public.
- RTC Section 231 relates to property owned by a nonprofit and leased to a government as a public park.
- RTC Section 236.5 relates to a public park leased by a nonprofit organization from a private owner.

#### BACKGROUND

[AB 42](#) (Huffman, Ch. 450, Stats, 2011) added Section 5080.42 to the PRC to authorize the DPR to enter into operating agreements with nonprofit organizations to operate state parks. Legislative findings and declarations included with this newly enacted section of law state that "[a]s the search for stable funding sources continues in this current budget crisis, it is critical that all efforts be made to continue public access to state parks and to keep our parks open. Nonprofit organizations can be important partners in meeting those objectives, and where possible, they should be invited to assist the state with operating parks in order to keep them open."

The Legislative Analyst's Office (LAO) issued a report "Strategies to Maintain California's Park System" in March of 2012 related to budget cuts resulting in possible closure of some of the 278 parks in the state park system. <http://www.lao.ca.gov/analysis/2012/resources/state-parks-030212.aspx>

#### COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author to enhance the capacity of the state to protect its valued state parks and the natural and cultural resources they contain, and to keep the parks open and accessible to the people of the state. The property tax provisions of this bill ensure that qualified nonprofit organizations that enter into agreements to operate state parks that were otherwise at risk of closure will not incur any property tax liability because the nonprofit organization is acting in the capacity of an "agent" of the state.

2. **This bill ensures that the operating agreements will not create a taxable possessory interest for the nonprofit organization taking over the operation of the state park.** Under RTC Section 107, to have a taxable possessory interest, the nonprofit organization must have "independence." This bill provides that the nonprofit organization is deemed to be an "agent" of the state. As an agent of the state, the nonprofit organization does not have the requisite "independence" and thus the interest is not subject to the property tax. Typically, the existence of an agency relationship is a question of fact and the assessor would review the agreement and make a determination.
3. **A nonprofit organization can apply for the welfare exemption on a taxable possessory interest.** If any nonprofit organization was assessed a possessory interest for operating a state park, the nonprofit organization could subsequently apply for the welfare exemption on that assessment and receive a property tax exemption on the property under those provisions of law if they otherwise qualified.
4. **This bill is limited in application to parks in the state park system.** Furthermore, the provisions of this bill are limited in application to operating agreements entered into pursuant to PRC Section 5080.42(a).

#### **COST ESTIMATE**

The BOE would incur insignificant costs (less than \$10,000) to inform and advise county assessors, the public, and staff of the new provision of law.

#### **REVENUE ESTIMATE**

State parks are not subject to property tax as state-owned property. According to the California State Parks Foundation, to date, no possessory interest assessments have been levied on any nonprofit organization that has entered into a contract to operate a state park pursuant to PRC Section 5080.42. If a nonprofit organization is acting in the capacity of an agent of the state, then there would be no taxable possessory interest to begin with and no property tax liability is created. If any nonprofit organization is determined to have a taxable possessory interest in a state park, then it could claim the welfare exemption on that possessory interest. If qualified, the possessory interest would be exempt from tax under existing law pursuant to the welfare exemption.

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